



Paper No. 6

COPY MAILED

DEC 16 2002

OFFICE OF PETITIONS

Tope-McKay & Associates
23852 Pacific Coast Highway #311
Malibu CA 90265

In re Application of	:	
Minden and Starodubov	:	LETTER AND
Application No. 09/924,957	:	NOTICE OF ABANDONMENT
Filed: August 7, 2001	:	
Attorney Docket No. HRL035	:	

Reference is made to the above-cited application for patent and a deficiency that has resulted in the abandonment of the application, with the effective date of such abandonment being February 4, 2002.

On October 3, 2001, a "Notice to File Missing Parts of Nonprovisional Application" (the "Notice") was mailed to the applicant and, among other requirements, indicated that an oath or declaration that complied with 37 CFR 1.63 was missing. The Notice provided a two-month period for reply and advised that extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). In response to the Notice on February 5, 2002, applicant filed a petition under 37 CFR 1.47(a), a request for an extension of time within the second month pursuant to 37 CFR 1.136(a), and remitted the outstanding filing fee. The instant petition was also accompanied by a "Certificate under 37 CFR 1.10 of Mailing by 'Express Mail'" indicating the petition was deposited on February 3, 2002. Also found with instant petition was the subject Express Mail label showing a "date-in" of December 5, 2002.

In order for the petition of February 5, 2002, to be considered timely, the petition would have had to been received by the Office by midnight on February 3, 2002, or be accompanied by certificate of mailing pursuant to 37 CFR 1.8 dated on, or before, February 3, 2002, or accompanied by evidence that the petition was deposited with the United States Postal Service Express Mail Service on, or before, February 3, 2002. Although the "Certificate under 37 CFR 1.10 of Mailing by 'Express Mail'" indicates that the package was deposited on February 3, 2002, the Express Mail label itself indicates that the package was not deposited until February 5, 2002. Without further evidence to the contrary, the "date-in" as shown on the Express Mail label will be taken as prima facie evidence of the date the package was deposited. The petition is, therefore, untimely, and, as no proper response was filed to the Notice within the allowable period, the application became abandoned on February 4, 2002.

Applicant may either: 1) file a petition to revive pursuant to 37 CFR 1.137 along with the requisite fee, or 2) file a petition under 37 CFR 1.10 with evidence that the "date-in" as shown on the Express Mail label was entered incorrectly. Petitioner is referred to the previously cited sections of Title 37 of the Code of Federal Regulations for the specific requirements of successful petitions pursuant to the same.

The application file will be retained in Office of Petitions until a successful petition under 37 CFR 1.137 or 1.10 is filed.

Further correspondence with respect to this matter should be addressed as follows:

In re Application of Minden and Starodubov
09/924,957

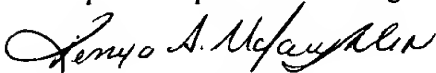
Page 2

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clarke Place
Crystal Plaza 4, Suite 3C23
Arlington, Virginia 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy